

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JIMMIE EARL STEPHEN,

Plaintiff,

vs.

DR. HOXIE, et al.,

Defendant(s).

No. C 08-00744 JW (PR)

ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION
AND TEMPORARY
RESTRAINING ORDER

(Docket No. 8)

Plaintiff, an inmate currently incarcerated at the California Men's Colony ("CMC") State Prison in San Luis Obispo, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that his constitutional rights were violated at CMC by CMC officials. Plaintiff has filed a motion for a preliminary injunction and temporary restraining order ("TRO"). (Docket No. 8)

Plaintiff's motion for a TRO/preliminary injunction is DENIED without prejudice for failure to satisfy the requirements of Federal Rule of Civil Procedure 65. Prior to granting a preliminary injunction, notice to the adverse party is required. Fed. R. Civ. P. 65(a)(1). A motion for preliminary injunction therefore cannot be decided until the parties to the action are served, and they have not yet been served here. See Zepeda v. INS, 753 F.2d 719, 727 (9th Cir. 1983). A TRO

1 may be granted without written or oral notice to the adverse party or that party's
2 attorney if: (1) it clearly appears from specific facts shown by affidavit or by the
3 verified complaint that immediate and irreparable injury, loss or damage will result
4 to the applicant before the adverse party or the party's attorney can be heard in
5 opposition, and (2) the applicant's attorney (plaintiff himself in this case, as he
6 proceeds pro se) certifies in writing the efforts, if any, which have been made to give
7 notice and the reasons supporting the claim that notice should not be required. Fed.
8 R. Civ. P. 65(b). Plaintiff has not satisfied both requirements.

9 This order terminates Docket No. 8.

10
11 DATED: June 4, 2008


12 JAMES WARE
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JIMMIE EARL STEPHEN,
Plaintiff,

Case Number: CV08-00744 JW

CERTIFICATE OF SERVICE

v.

DR. HOXIE, et al.,

Defendants.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 17, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jimmie Earl Stephen C56483
California Men's Colony State Prison
P. O. Box 8101 - A-1149
San Luis Obispo, Ca 93409-8101

Dated: June 17, 2008

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk